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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,823	11/07/2005	Robert K. Yang	1199-13 PCT/US	2398
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Daniel A Scola Hoffmann & Baron 6900 Jericho Turnpike Syosset, NY 11791			EXAMINER SHEIKH, HUMERA N	
			ART UNIT	PAPER NUMBER
			1615	
			MAIL DATE	DELIVERY MODE
			08/05/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/521,823

Applicant(s)

YANG ET AL.

Examiner

Humera N. Sheikh

Art Unit

1615

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 July 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s) _____

13. ☐ Other: _____.

/Humera N. Sheikh/
Primary Examiner, Art Unit 1615

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues, "Cremer does not include weakened sections which releasably join dosage units, and as acknowledged by Examiner, the perforations of Cremer are within the packaging material. Cremer manufactures individual dosage units of film and packages them into separate packaging units". Applicant's arguments have been considered but were not persuasive. As noted previously, there is nothing in the instant claims that would preclude the individually sealed or packaged dosage units disclosed by Cremer. It is the position of the Examiner that the perforations of Cremer are equivalent to the "one or more weakened sections" of the present claims; the only distinction being that the perforations of Cremer occur within the packaging material. However, here again, the packaging material of Cremer has not been excluded based on the present claim language. Furthermore, note in particular that the claim language "which permit said dosage units to be detached from said film" indicates a future-intended use or capability of the film, i.e., that it is detachable. Nowhere in the claims is the detachment of the dosage units required. Applicant's limitation merely represents that the dosage units can be detached, based on the weakened sections. Thus, Applicant's arguments were not found persuasive. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Regarding the Chen reference, Applicant argued, "The feature of the dosage units being releasably joined by one or more weakened sections are characteristics of the film". This was not persuasive. The limitation denotes that the film is capable of detachment (i.e., which can be a property or characteristic of the film). However, this does not equate with detachment of the film being required. Thus, the fact that the film can be 'releasably joined' signifies a use of the film, but the instant claim language does not necessarily require detachment of the film, as argued by Applicant. Applicant argued, "The Examiner has not articulated a sound basis for believing that the products of the applicant and the prior art are the same". This was not found persuasive. Chen teaches a dosage unit comprising a perforated film strip. Applicant has not shown that the perforated strips of Chen are not equivalent to films instantly claimed. Moreover, the rejection applied herein is a 35 USC 103(a) rejection and not a 102 anticipation rejection. The instant delivery vehicle would be prima facie obvious in view of the teachings of Chen. Further, for the reasons advanced in the Final Office Action (filed 05/11/10), Applicant's arguments were not held persuasive.